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Supreme Court, U.S.
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OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1993

NO.

R.D. WRIGHT, a/k/a DON WRIGHT, a/k/a R. DON WRIGHT, PETITIONER

VERSUS

JOHN DEERE INDUSTRIAL EQUIPMENT CO., RESPONDENT

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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24 pp

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THE Petitioner, R. DON WRIGHT ("WRIGHT"), respectfully prays that a writ of certiorari issue to review the judgement and opinion of the UNITED STATES COURT OF APPEALS for the FIFTH CIRCUIT entered in this proceeding on SEPTEMBER 3,1993.

QUESTIONS PRESENTED FOR REVIEW

1.Can a resident of Texas be sanctioned out of his Homestead rights as afforded by the Texas Constitution concerning Homesteads.

2. Can a constructive trust an equitable lien be attached to Homestead in Texas if it does not conform to the conditions as set out in the Texas Constitution concerning Homesteads.

3. Are all residents of Texas afforded the same Homestead rights.

4. Can the Fifth Circuit ignore the Texas State Constitution Article 16 § 50 as to rights it provides to residents of Texas and apply only to whom the Fifth Circuit so desires.

5.Can the Homestead of R. Don Wright which was purchased in 1976, and has been lived in continuous to the present time,and no other residence has ever been owned in Texas by R. Don Wright change from a Homestead in 1976,1977,1978, 1979,1980, 1981,1982,January through July of 1983 and then suddenly stop for a 5 month period and then return to Homestead status as referred to in the Fifth Circuits' opinion in response to the Petitioner's motion for rehearing.

6.When the plaintiff never plead the "Non Homestead Issue in any pleadings", can the Fifth Circuit "insert" a new issue of the defendant not being able to prove his Homestead exists because of sanctions striking the defendant's pleadings,even though the plaintiff refers to Debtor's Homestead several times in their pleadings which constitutes a Judicial admission.

7.Does the Fifth Circuit "law of the case" doctrine render the Texas Constitution invalid even when it is apparent the Fifth Circuit "law of the case" doctrine directly negates rights afforded R. Don Wright as a resident of Texas and Texas Constitution concerning liens or constructive trusts on Homesteads.

8.Can the Fifth Circuit so far depart from the accepted and usual course of judicial proceedings, of its prior decisions to not afford R. Don Wright the same rights as other Texas residents concerning Homesteads.

9. Can the Fifth Circuit decide a question that conflicts with a decision of the Supreme Court of the United States concerning liens and trusts being attached to Texas Homesteads.

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The opinion of the Court of Appeals is attached hereto as Appendix A. The opinion of the United States District Court is attached hereto as Appendix B. The opinion of the Bankruptcy Court is attached hereto as Appendix C.

Jurisdictional Statement

The judgement of the Court of Appeals for the Fifth Circuit was entered on September 3, 1993. The jurisdiction of this court is invoked pursant to 28 U.S.C. 1254(1).

CONSTITUTION PROVISIONS AND STATUTES INVOLVED

This case involves the interpretation of the Texas State Constitution Article 16 § 50 which states in part, "No mortgage, trust deed, or other lien on the homestead shall ever be valid, except for the purchase money thereof, or improvementds made there on, as herein before provided".This case also involves the denial of the Homestead right as afforded by the Texas State Constitution to all residences of the State of Texas to possess a homestead as outlined Article 16 § 50.

STATEMENT OF THE CASE

This case was appealed to the Fifth Circuit pursuant to 28 U.S.C. §1334. Wright filed chapter 11 bankruptcy in 1987, this was converted to a chapter 7 in 1988. Wright's wife did not file bankruptcy.

Wright and his wife bought their homestead in 1976 and have lived in from that time to the present. IN 1982 Wright and his wife remodeled their homestead with all work finished all work in May of 1983. All work was paid for on a ongoing basis and no work on the homestead has been done since May of 1983 and no funds were paid to anyone since this time. The homestead has carried a homestead tax exemption prior to any association with John Deere.

Wright started a business relationship with John Deere through a related company. This relationship started on or about the 1st day of August 1983, and ended in December 1983. As a result of the short business venture a loss of approximately $400,000 existed. John Deere sued

Wright in U.S. District court in Dallas and an agreed judgement resulted for the approximately $400,000 against Wright only. No accusations of any misappropriations of any funds were made in the District Court.John Deere filed an adversary complaint on the sixty first day after the §341 meeting of creditors, which was allowed by the Bankruptcy Court. Among other things John Deere alleged that Wright diverted funds to "inhance" his homestead and prayed for a constructive trust and equitable lien to be impressed on his homestead in the amount it was enhanced. Wright denied any funds of any amount were diverted from Deere and no funds were used to enhance his homestead. No proof of any type was ever presented to confirm Deere's complaint.

Wright was sanctioned by the Bankruptcy Court for disobeying orders and his answer to the complaint was stricken and a default judgement was awardwed John Deere. The Bankruptcy Court then let John Deere change their pleadings to have a default against Wright not for any amount

of enhancement, but for the amount of the prior District Court agreed judgement. The bankruptcy court also awarded sanctions against Wright to another creditor, and the trustee. The trustee's award was for the denial of Wright's discharge and $1,000 in attorneys fees. Wright appealed the trustee's award to the District Court and the Fifth Circuit. The Fifth Circuit affirmed the sanctions as to the truste, which had nothing to do with the homestead issue.

Wright appealed the Bankruptcy Court's award to John Deere and pointed out that a constructive trust and equitable lien could not be impressed on a Texas homestead unless it conforms to the Texas Constitution concerning such. The District Court affirmed the Bankruptcy Court and the Fifth Circuit affirmed the District Court.

REASONS FOR GRANTING THE WRIT

The opinion of the Fifth Circuit creates a conflict between Texas Constitution Article 16§50 regarding liens and trusts on Texas homesteads.

IN re United States v Rodgers, 461 US 677,76 L Ed 2d 236, 103 S Ct 2132,Justice Brennan [461 US 684] B recited "Thus under Tex Const, Art 16 § 50:" "The homestead of a family, or of a single adult person, shall be, and is hereby protected from forced sale, for the payment of all debts except for [certain exceptions not relevant here]...No mortgage, trust deed, or other lien on the homestead shall ever be valid, except for [certain exceptions not relevant here]"7. Homestead § 4- termination - divorce 6a, 6b. The homestead character of property, in which each spouse in a marriage has a separate and individual possessory interest that is only lost by death or abandonment and may not be compromised by the other spouse or by his or her heirs, is not destroyed in Texas even by divorce if one of the parties to the divorce continues to maintain the property as a proper homestead, although the courts may partition the property, award it to one of the spouses ,or require one spouse to compensate the other as part of the

disposition of marital property attendant to the divorce proceedings. This case never involved the issue of more than one location being claimed or disputed as a homestead. Wright and his spouse has lived in homestead since 1976 and continue to do so today. The cases cited in th opinion of the Fifth Circuit or completely off point as they deal with more than one location. The cite of the Fifth Circuit in reference to the burden of establishing the homestead character on the one claiming the homestead exemption, First Interstate Bank v. Bland, 810 S.W. 2d 277, 286 (Tex. App.--Fort Worth 1991, no writ); 9.HOMESTEAD 29, states Possession and use of land by one who owns it and resides upon it makes it homestead in law and fact. Vernons Ann. Texas Const. Art 16 § 50. At no time in this case has John Deere ever raised the question of there being another residence which might question or insinuate Wright was trying to claim two homesteads, or that he did not live in the homestead since 1976, or own the property.

In Hoffman v Love 494 S W. 2d 591 Court of Civil Appeals of Texas, Dallas 1973 , States Failure of vendors of property to claim homestead exemption in their answer in action against them by judgement creditors was not an abandonment of the property as a homestead as a matter of law, so that purchaser of property has standing to assert that no judgement lien had attached. In Matter of Moody, 862 F2d 1194 (5th Cir. 1989) one of the panel members of this appeal in Moody, held that Under Texas law, no equitable lien or constructive trust can be imposed on homestead property which is merely augmented or improved with wrongfully acquired funds,and not purchased with such funds. Wright denies using any of John Deere's funds to enhance his homestead. Even if he had, no lien could attach to his homestead.

Under Texas law, once homestead is established, it is presumed to continue until it is abandoned, and a party asserting abandonment has burden of proof. Firstbank v. Pope, E.D. Tex 1992, 141 B.R. 115, affirmed 979 F. 2d 1534.

CONCLUSION

The opinions of the Fifth Circuit in this case conflict with Article 16 § 50 of the Texas Constitution. The opinions of the Fifth Circuit also conflict with ruling of the Supreme Court of the United States. The opinions conflict with settled law of Texas and case law concerning homesteads.This case conflicts with recent published opinions of panel members of this case. The law of the case issue should be extinguised and the loss of homestead rights by sanctions, instead of by the laws of the Texas Constitution is a concrete example of a personality being the factor in an opinion instead of law governing the issue.

Respectfully Submitted

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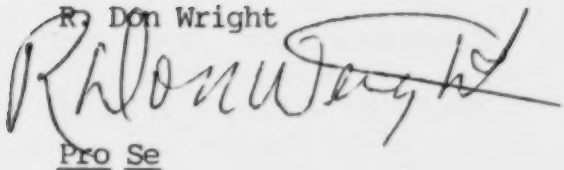

Pro Se

APPENDIX

APPENDIX A

UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 93-1144

No. 93-1146

Summary Calender

IN THE MATTER OF R. DON WRIGHT and MICKI WRIGHT,

DEBTORS, R.DON WRIGHT

Appellant,

VERSUS

JOHN DEERE INDUSTRIAL EQUIPMENT CO.,

Appellee.

Appeal from the United States District

Court for the Northern District of Texas

(1:91-CV-058-C; 1:91-CV-059-C)

Before: Jolly, Weiner, and Emilio M. Garza,

Circuit Judges.PER CURIAM*:

R. DON WRIGHT, Debtor-Apellant, appeals the

district court's affirmance of the bankruptcy court's imposition of a constructive trust and equitable lien on Wright's domicile in favor of John DeereIndustrial Equipment Co., Creditor -Appellee ("John Deere").The constructive trust and equitable lien were imposed as part of the bankruptcy court's entry of default judgement against Wright for his repeated refusals to follow the bankruptcy court's lawful orders that he allow John Deere and other creditors to inspect personal property located within his domicile. Concluding that under the law of the case doctrine we are bound by an earlier decision of this court upholding the default judgement, we affirm the orders of the district court.

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*Local Rule 47.5 provides:"The publication of opinions that have no precedential value and merely decide particular cases on the basis of well settled principles of law imposes needless expense on the public and burdens on the legal profession"Pursuant to that Rule, the Court has determined that this opinion should not be published.

I

Both of Wright's instant appeals, No. 93-1144 and No. 93-1146, arise out of the district court orders 1 affirming the bankruptcy court's imposition of sanctions that in turn produced the entry of default judgement in favor of creditors John Deere and NCNB Texas National Bank. They and the trustee, Stanley Wright, had moved for sanctions because of Wright's repeated refusal to obey the Bankruptcy Court's inspection orders.

---

1 Appeal no. 1144 arises from the Order dated January 25,1993 in adversarial case no. CA-1-91-058-C;Appeal no. 1146 arises from the Order dated January 22, 1991in adversarial case no. CA-1-91-059-C. Neither the Appellant nor the Appellees have distinguished between the two adversarial cases and orders on appeal. In addition, the only thing that the Appellant challenges is the imposition of the equitable lien and constructive trust in favor of John Deere,the imposition of which was contained in both orders of the district Court.

Thus, for the purposes of these appeals, we have consolidated the analysis of the two orders and the constructive trust issue within this one issue.

After conducting a full evidentiary hearing the bankruptcy court entered orders in favor of the trustee and the creditors.

In an earlier appeal Wright challenged the order imposing sanctions in favor of the trustee. In Wright I,[2] we reviewed those sanctions and concluded that none were erroneous, including those striking Wright's answer and imposing a default judgement in favor of the creditors. As we stated in Wright I:

> Wright invoked the aid of the court in seeking the a benefit he desired--a discharge in bankruptcy. As long as the court did his bidding he was inclined to obey. When orders adverse to Wright's position were in issue he chose to ignore them without seeking interlocutory appeal or mandamus relief. Wright's conduct constituted open and notorious contempt of the

bankruptcy court. We cannot and will not countenance such. [3]

In this appeal Wright challenges the district court's orders affirming the bankruptcy court's sanctions in favor of John Deere. Specifically, Wright challenges the sanction that imposed an equitable lien and constrictive trust as part of the default judgement in favor of John Deere.

---

2 In re R.Don Wright, No. 92-1604 (5th Cir., Dec.22,1992) [Wright I].

3 Wright I, at 6.

II

Wright asserts several grounds to challenge the district court's affirming the equitable lien and constructive trust in favor of John Deere. We do not address the merits of Wright's challenges, however, because we are bound by the earlier decision of this court in Wright I. 4

In Wright I, while deciding the trustee's appeal , we addressed whether the bankruptcy court abused its discretion in striking Wright's answer and entering default judgement in favor of the creditors, John Deere and NCNB. After a review of the record we concluded that Wright's open and notorious defiance of the bankruptcy court amply justified the imposition of those sanctions.5 The following colloquy with the bankruptcy court reveals the extent of Wright's contempt.Q: so Mr. Wright if the court issues a forth order or a fifth order compelling you to allow the creditors entry to your residence, to inspect and appraise the entire contents, you will continue to refuse to obey those orders? A: I will refuse to let you in the house;

yes sir.

The sanction striking Wright's answer and entering default judgement in favor of John Deere establishes the validity of John Deere's equitable lien and constructive trust.

E.g., Ingalls Shipbuilding, Inc. v. Director, Office of the Workers'Compensation Programs, 976 F. 2d 934,937 (5th Cir. 1992) stating that one panel is bound by the decision of the prior panel absent intervening legislation or a superseding decision by the Supreme Court or this Court en banc). 5 Wright I, at 1, 6

As a result of Wright's answer being stricken, the allegations contained in John Deere's original and amended complaint are taken as true-- including the allegation that Wright fraudlently diverted proceeds from John Deere for the improvement of his property. By entering the default judgement the bankruptcy court granted

John Deere's prayer for relief--which included the request that Wright's property be impressed with an equitable lien and constructive trust for $403,933.34

Consideration here of Wright's sole colorable basis for challenging the equitable lien and constructive trust--that they cannot be placed on non-fraudulently acquired homestead property as a matter of law--is also pretermitted by the sanctions upheld by a previous panel of this court in Wright I.Wright's challenge is predicated on classifying his property as a homestead as of the time he misappropriated the funds.

---

6 E.g NCNB Texas National Bank v. Carpenter,849, S.W. 2d 875, 879(Tex App.--Fort Worth 1993, no writ; First Interstate Bank v. Bland,810 S.W. 2d 277,286 (Tex.App--Forth Worth 1991, no writ);Pace v. McEwen,617 S.W.2d 816,818 (Tex. Civ App.--Houston [14th Dist.]1981, no writ).

Texas law, however, places the burden of establishing the homestead exemption.6 Because Wright subjected himself to sanctions on this issue that prevented him from offering proof on this issue he cannot claim that his property was a homestead during the relevant period without requiring us to revisit whether those sanctions were properly imposed. Again, that inquiry is precluded by the law of the case.7

III

Conclusion

Wright's open defiance of the bankruptcy court led to extensive but justifiable sanctions having far reaching consequences. One of those consequences was the imposition of an equitable lien and constructive trust on his domicile. Because we conclude that our previous decision bars us from reexaamination of the validity of the sanctions on which the districts's orders are based, the orders of the district court are AFFIRMED.8

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7. See e.g. ,E.E.O.C.v Intern. Longshoremen's Ass'n,623F.2d 1054,1058 (5th Cir.1980) (stating that the law of the case" rule precludes review of findings of fact and conclusions of law made by an appellate court in a prior appeal of the case at issue).

8 In Affirming the district court, and thus the bankruptcy court, we caution Wright that,like his defiance of those courts, any frivolous or contemptuous actions in this court relative to the subject matter of this and previous decisions could subject him to the full panoply of sanctions at our disposal.

APPENDIX Aa

UNITED STATES COURT OF APPEALS

For the Fifth Circuit

No. 93-1144

No. 93-1146

IN THE MATTER OF:R.DON WRIGHT and MICKI WRIGHT,

DEBTORS.

R. DON WRIGHT

APPELLANT

VERSUS

JOHN DEERE INDUSTRIAL EQUIPMENT CO.,

APPELLEE.

Appeals from the United States District Court

for the Northern District of Texas

(1;91-CV-058-C; 1:91-CV-059-C)

ON PETITION FOR REHEARING

(October 13, 1993)

before JOLLY, WEINER, and EMILIO M. GARZA, Circuit Judges PER CURIAM:

IT IS ORDERED that the petitions for rehearing filed in the above titled and numbered causes on behalf of Appellant, Wright, be and the same are hereby

DENIED.

In its petition for rehearing, Wright argues for the first time that the Appellee, John Deere Industrial Equipment Co., judicially admitted that Wright's property was a homestead

during the period in which the funds at issue were diverted to that property. Deere counters that it merely used the term "homestead" in the present tense, namely to describe the current status of the property.

We decline to consider these issues, as we adhere to the well-settled practice that a court of appeals will not consider claims raised for the first time in a petition for rehearing. 1

ENTERED FOR THE COURT

S/ WEiner

UNITED STATES CIRCUIT JUDGE

CLERKS NOTE:

SEE FRAP AND LOCAL RULE 41 FOR STAY OF THE MANDATE.

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1 E.g. Browing v. Navarro, 894 F.2d 99, 100 (5th Cir. 1990); Dean v. Dean, 837 F. 2d 1267,1268 (5th Cir. 1988); Wells v. Rushing, 760 F. 2d 660, 661 (5th Cir. 1985).

APPENDIX B

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF TEXAS

ABILENE DIVISION

FILED 1-22-1993

In re

R.D. WRIGHT, a/k/a DON WRIGHT, R.DON WRIGHT

Case No. 188-10048-7

Debtor

R.D. WRIGHT, a/k/a DON WRIGHT a/k/a R. Don Wright

Appellant,

v.

JOHN DEERE INDUSTRIAL EQUIPMENT COMPANY, NCNB TEXAS NATIONAL BANK, and STANLEY WRIGHT, Trustee,

CA-1-91-059-C

APPEAL FROM THE UNITED STATES BANKRUPTCY COURT FOR THE NORTHERN DISTRICT OF TEXAS JOHN C. AKARD, BANKRUPTCY JUDGE, PRESIDING

ORDER

This Case is before the court for the consideration of another appeal of the debtor, R.D. Wright, from the orders of the bankruptcy court imposing various sanctions upon him, including the denial of his discharge, the award of monetary sanctions in favor of certain creditors, and the imposition of a nondischargeable, equitable lien and constructive trust on his homestead in favor of John Deere.

Appellant contends that the orders of the court were unlawful, violated certain of his constitutional rights, and are not supported by evidence in the record.The orders of the bankruptcy court have been affirmed by this court an d by the United States Court of Appeals for the Fifth Circuit. Wright v. Wright(In the matter of R.Don Wright),No. 92-1604, (5th Cir.,Dec.22,1992).The additional argument presented by R.Don Wright in this appeal, that the record does not support the imposition on his homestead, has no merit.

It is, accordingly, ordered that the decision of the bankruptcy court, is in all

things , AFFIRMED.

The clerk shall furnish a copy of this order to each attorney of record.

Dated this 22nd day of January 1993.

S/ Sam R.Cummings

SAM R. CUMMINGS

UNITED STATES DISTRICT JUDGE

APPENDIX C

IN THE UNITED STATES BANKRUPTCY

COURT NORTHERN DISTRICT OF TEXAS

ABILENE DIVISION

IN RE: CASE NO. 188-10048-7

R.D. WRIGHT DEBTOR, ENTERED SEP 27 1990

JOHN DEERE INDUSTRIAL BANKRUPTCY COURT

PLAINTIFF, LUBBOCK, TEXAS

V. ADVERSARY NO.188-1035

R.D. WRIGHT and

MICKI WRIGHT,

DEFENDANTS.

FINAL JUDGEMENTS

By Order on Motion for Sanctions of even date herewith, the Court defendants answers to plaintiff's complaint in this adversary proceedings and entered default against defendants in this adversary proceedings. The Court further ordered that plaintiff John deere Industrial Equipment Company have and recover of and from debtor the sum of $5,217.00 as sanctions.

Therefore it is

ORDERED, ADJUDGED AND DECREED ATHAT DEBTOR R.D. Wright's discharge under 11 U.S. C. § 727 (a) (2) (3) (4)

(5) and (6) is denied;and it is further is

ORDERED, ADJUDGED AND DECREED that defendant Micki Wright's hypothetical discharge under 11 U.S. C. § 727 and § 524 (a) (3) and (b) (2) is denied; and it is further is

ORDERED ADJUDGED AND DECREED that Debtor R.D. Wright's debt to John Deere Industrial Equipment Company evidenced by that certain agreed judgement in favor of John Deere Industrial Equipment Company in principal amount of $403,933.34, plus $32,500.00 in attorneys fees in Civil Action No. CA-84-1052-G in the United States District Court for the Northern District of Texas, Dallas Division, (the"Judgement") is not dischargeable under 11 U.S. C §523 (a) (2) (4) and (6);and it is

ORDERED, ADJUDGED AND DECREED that the following described real property and improvements thereon are impressed with a dischargeable equitable lien and constructive

trust in favor of John Dere Industrial Equipment Company in the amount of $403,933.34, to wit:

Lot Six (6), Blk."D", of section one (1) of Lytle Shores Addition, a Subdivision of Part of Sections 52 and 61 of Blind Asylum Lands in The City at Abilene, Taylor County, Texas,according to the
Plat Records of Taylor County, Texas.and is other wise known as 2101 Shoreline Drive, Abilene, Texas;and it further is

ORDERED, ADJUDGED AND DECREED that John Deere Industrial Equipment Company have and recover of and from R.D. Wright the sum of $5,217.00 as sanctions, which sum shall not be dischargeable.

All relief not specifically granted herein is denied.

Dated this 24 day of September, 1990.

S/ John C. Akard

UNITED STATES BANKRUPTCY JUDGE